



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0099; 4500030113]

RIN 1018–BA74

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Guadalupe Fescue

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Festuca ligulata* (Guadalupe fescue), a plant species from the Chihuahuan Desert of west Texas and Mexico, as an endangered species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species.

DATES: We will accept comments received or postmarked on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments by one of the following methods:

- (1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2016–0099, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2016–0099, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd., Suite 200, Austin, TX 78758; telephone 512–490–0057; or facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best available scientific and commercial data and will be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies,

Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Guadalupe fescue's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for soils, reproduction, and associated species;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 et seq.) directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified above in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are seeking the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the natural history, habitats, distribution, and ecology of Guadalupe fescue. The peer reviewers are currently reviewing the Species Status Assessment (SSA Report) for Guadalupe fescue, which will inform our determination.

Previous Federal Action

On January 9, 1975, as directed by the Act, the Secretary for the Smithsonian Institution submitted a report to Congress on potential endangered and threatened plant species of the United States (Smithsonian 1975, entire). The report identified more than 3,000 plant species as potentially either endangered or threatened, including *Festuca ligulata* (Guadalupe fescue). On July 1, 1975, we published in the **Federal Register** (40 FR 27824) our notification that we considered this report to be a petition to list the identified plants as either endangered or threatened under the Act. The 1975 notice solicited information from Federal and State agencies, and the public, on the status of the species.

On December 15, 1980, we published a comprehensive notice of review of native plants (45 FR 82480) that included Guadalupe fescue as a Category 2 candidate species. Category 2 candidates were taxa for which information then in the possession of the Service indicated that proposing to list as endangered or threatened species was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not then available to support proposed rules. We retained the Category 2 status for Guadalupe fescue in updated notices of review of vascular plant taxa on September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184).

In a notice of review published on September 30, 1993 (58 FR 51144), we revised the status of Guadalupe fescue to a Category 1 candidate, meaning that the Service had on file sufficient information on biological vulnerability and threat(s) to support a proposal to list it as an endangered or threatened species, but that a proposed rule had not yet been issued because this action was precluded at that time by other listing activities. The candidate notice of review published on February 28, 1996 (61 FR 7596), eliminated categories within candidate species, and Guadalupe fescue was included as a candidate with a listing priority number of 8. The listing priority number was revised to 11 on October 25, 1999 (64 FR 57534), based on the commitment of Big Bend National Park to manage habitat for the species through a candidate conservation agreement (CCA). On May 4, 2004 (69 FR 24876), we indicated that Guadalupe fescue remained a candidate following a re-submitted petition. We have retained the candidate status for Guadalupe fescue, with a listing priority number of 11, in all subsequent notices of review (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015).

Elsewhere in this issue of the **Federal Register**, we propose to designate critical habitat for Guadalupe fescue under the Act.

Background

Staff of the Austin Ecological Services Field Office developed the SSA Report for Guadalupe fescue, which is an evaluation of the best available scientific and commercial data on the status of the species, including the past, present, and future threats to this species and the

effect of conservation measures. The SSA Report and other materials related to this proposal are available online at <http://www.regulations.gov>, under Docket No. FWS–R2–ES–2016–0099, and on the Southwest Region Ecological Services Website at:

https://www.fws.gov/southwest/es/AustinTexas/ESA_Our_species.html.

The SSA Report (Service 2016) is based on a thorough review of the natural history, habitats, ecology, populations, and range of Guadalupe fescue. The SSA Report analyzes individual, population, and species requirements; factors affecting the species' survival; and current conditions to assess the species' current and future viability in terms of resiliency, redundancy, and representation. We define viability as the ability of a species to maintain populations over a defined period of time.

Resiliency refers to the population size necessary to endure stochastic environmental variation (Shaffer and Stein 2000, pp. 308-310). Resilient populations are better able to recover from losses caused by random variation, such as fluctuations in recruitment (demographic stochasticity), variations in rainfall (environmental stochasticity), or changes in the frequency of wildfires.

Redundancy refers to the number and geographic distribution of populations or sites necessary to endure catastrophic events (Shaffer and Stein 2000, pp. 308-310). As defined here, catastrophic events are rare occurrences, usually of finite duration, that cause severe impacts to one or more populations. Examples of catastrophic events include tropical storms, floods, prolonged drought, and unusually intense wildfire. Species that have multiple resilient populations distributed over a larger landscape are more likely to survive catastrophic events, since not all populations would be affected.

Representation refers to the genetic diversity, both within and among populations, necessary to conserve long-term adaptive capability (Shaffer and Stein 2000, pp. 307-308). Species with greater genetic diversity are more able to adapt to environmental changes and to colonize new sites.

Summary of Biological Status and Threats

Guadalupe fescue is a short-lived perennial grass species found only in a few high mountains of the Chihuahuan Desert, west of the Pecos River in Texas and in the State of Coahuila, Mexico. These “sky island” habitats are conifer-oak woodlands above 1,800 meters (m) (5,905 feet (ft)) elevation. The species has been reported in only six sites. It was first collected in 1931, in the Guadalupe Mountains, Culberson County, Texas, and in the Chisos Mountains, Brewster County, Texas; these sites are now within Guadalupe Mountains National Park and Big Bend National Park, respectively. Guadalupe fescue was documented near Fraile, southern Coahuila, in 1941; in the Sierra la Madera, central Coahuila, in 1977; and at two sites in the Maderas del Carmen Mountains of northern Coahuila in 1973 and 2003. The last three sites are now within protected natural areas (“areas naturales protegidas” (ANP)) designated by the Mexican federal government.

In the United States, known populations of Guadalupe fescue have experienced significant declines. Guadalupe fescue was last observed in the Guadalupe Mountains in 1952; this population is presumed extirpated. Researchers from Texas Parks and Wildlife Department and Big Bend National Park have quantitatively monitored plots within the Chisos Mountains population over a 22-year period. Our analysis of these data indicates that the population within the plots (about 25 to 50 percent of the total population) has decreased significantly over time, from a high of 125 and 127 individuals in 1993 and 1994, to 47 individuals in 2013 and 2014.

Little information is available for the known populations in Mexico. Valdes-Reyna (2009, pp. 13, 15) confirmed that one population in the Maderas del Carmen mountains is extant. This population had several hundred individuals in 2003 (Big Bend National Park and Service 2008), and is protected within ANP Maderas del Carmen. The status of the other three Coahuilan populations remains unknown.

To estimate the amount and distribution of potential Guadalupe fescue habitat, we created maps of conifer-oak forests in the Chihuahuan Desert at elevations greater than 1,800 m. Since larger habitat areas may be more suitable, we restricted this model to areas greater than 200 hectares (ha) (494 acres (ac)). This model reveals that northern Mexico has 283 areas of potential habitat totaling 537,998 ha (over 1.3 million ac), compared to 20 such areas totaling 27,881 ha (68,894 ac) in Texas. Thus, about 95 percent of the potential habitat is in Mexico. However, we do not have information confirming that any of these areas actually contain Guadalupe fescue.

Monitoring suggests that the Chisos Mountains population has decreased in size; however the data indicate that survival rates within this monitored population have increased. These inverse trends may be explained by a recruitment rate (establishment of new individuals) that is too low to sustain the population. We do not know why the recruitment rate at the Chisos population is low. We have no information about the species' genetic viability, within-population and within-species genetic differentiation, chromosome number, or breeding system. However, since grasses are wind-pollinated, small, widely-scattered populations produce few if any seeds from out-crossing (pollination by unrelated individuals). Many perennial grasses, including some *Festuca* species, are obligate out-crossers. If Guadalupe fescue is an obligate out-crosser, the sparse Chisos population would produce few seeds; if it is not an obligate out-

crosser, it is probably highly inbred and may suffer from inbreeding depression. Although the minimum viable population (MVP) size has not yet been calculated for Guadalupe fescue, we can estimate its MVP by comparison to species with similar life histories (i.e., surrogates) for which MVPs have been calculated, using the following guideline adapted from Pavlik (1996, p. 137). Through this comparison, we estimate that populations of Guadalupe fescue should have at least 500 to 1,000 individuals for long-term population viability (SSA Report, pp. 17–18).

One factor potentially negatively affecting the existing population in the Chisos Mountains is the loss of regular wildfires. Periodic wildfire and leaf litter reduction may be necessary for long-term survival of Guadalupe fescue populations, although this has not been investigated. Historically, wildfires occurred in the vicinity of the Chisos population at least 10 times between 1770 and 1940 (Moir and Meents 1981, p. 7; Moir 1982, pp. 90–98; Poole 1989, p. 8; Camp *et al.* 2006, pp. 3–6, 14–23, 59–61). However, the last major fire there was more than 70 years ago, due to fire suppression within the National Park. The long absence of fire and the resulting accumulation of fuels also increase the risk of more intense wildfire, which could result in the loss of the remaining Guadalupe fescue population in the United States.

Other factors that may affect the continued survival of Guadalupe fescue include the genetic and demographic consequences of small population sizes and isolation of its known populations; livestock grazing; trail runoff; competition from invasive species; effects of climate change, such as higher temperatures and changes in the amount and seasonal pattern of rainfall; and fungal infection of seeds. Big Bend National Park has minimized the potential threat of trampling from humans and pack animals by restricting visitors and trail maintenance crews to established trails and through visitor outreach.

The Service, Big Bend National Park, and Guadalupe Mountains National Park established CCAs for the Guadalupe fescue in 1998 and 2008. The objectives of these 10-year agreements include monitoring and surveys, seed and live plant banking, fire and invasive species management, trail management, staff and visitor education, establishment of an advisory team of species experts, and cooperation with Mexican agencies and researchers to conserve the known populations of Guadalupe fescue and search for new ones. Research objectives include investigations of fire ecology, habitat management, genetic structure, reproductive biology, and reintroduction.

Based on the best available information, we know of only two extant populations of Guadalupe fescue. The Chisos Mountains population is far smaller than our estimated MVP level, and despite protection, appropriate management, and periodic monitoring by the National Park Service, it has declined between 1993 and 2014. The other extant population, at ANP Maderas del Carmen in northern Coahuila, Mexico, may have exceeded our estimated MVP level as recently as 2003, and the site is managed for natural resources conservation.

Unfortunately, we possess very little information about the current status of the species at Maderas del Carmen and throughout Mexico. Our analysis revealed that a large amount of potential habitat exists in northern Mexico. Thus, it is possible that other undiscovered populations of Guadalupe fescue exist in northern Mexico, and that the overall status of the species is more secure than we now know. Nonetheless, the Service has to make a determination based on the best available scientific data, which currently confirm only one extant population in Mexico.

Determination

Standard for Review

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a) of the Act, the Secretary is to make endangered or threatened determinations required by section 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is endangered or threatened are provided in section 3 of the Act. An endangered species is any species that is “in danger of extinction throughout all or a significant portion of its range.” A threatened species is any species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definition of endangered or of threatened, we determine whether any species is an endangered species or a threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Our determination must also consider certain conservation measures for the species.

The fundamental question before the Service is whether the species warrants protection as endangered or threatened under the Act. To make this determination, we evaluated the projections of extinction risk, described in terms of the condition of current and future populations and their distribution (taking into account the risk factors and their effects on those

populations). For any species, as population condition declines and distribution shrinks, the species' extinction risk increases and overall viability declines.

Summary of Analysis

We documented in our SSA Report that only two extant populations of Guadalupe fescue are currently known. The only extant population in the United States, in the Chisos Mountains at Big Bend National Park, has declined in abundance since 1993. Only 47 individuals were observed there in 2014, which is far less than an estimated MVP size of 500 to 1,000 individuals based on species with similar life histories. The other extant population, in the ANP Maderas del Carmen in Coahuila, had several hundred individuals in 2003, and was confirmed extant in 2009 with no population estimate. Three other historically known populations in remote areas of Coahuila, Mexico, have not been monitored in at least 39 years, and their statuses remain unknown.

We find that several factors reduce the viability of Guadalupe fescue, including: Changes in the wildfire cycle and vegetation structure of its habitats, trampling from humans and pack animals, trail runoff, and competition from invasive species (Factor A); grazing by livestock and feral animals of Guadalupe fescue plants (Factor C); and the genetic and demographic consequences of small population sizes, isolation of its known populations, and potential impacts of climate changes, such as higher temperatures and changes in the amount and seasonal pattern of rainfall (Factor E). Although trampling, trail runoff, invasive species, and grazing are likely to be ameliorated by ongoing and future conservation efforts on Federal lands in the United States, the effects of small population size, geographic isolation, and climate change are all rangewide threats and expected to continue into the foreseeable future. There is limited information available regarding the known populations of Guadalupe fescue in Mexico;

however, most of the above factors are likely to be widespread and ongoing threats throughout the potential habitats in Mexico (Service 2016).

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” We find that Guadalupe fescue is currently in danger of extinction throughout all of its range, and therefore warrants a determination that it is an endangered species. There are only two known extant populations of Guadalupe fescue, one each in Texas and in Coahuila, Mexico. We have no recent observations of three additional populations reported from Mexico, and their statuses are unknown. A second population reported from the United States has not been seen in more than 60 years, despite extensive surveys, and is presumed extirpated. Based on monitoring conducted in 2013 and 2014, the Chisos Mountains population in the United States is estimated to have in the range of about 100 and 200 individuals, well below the estimated MVP of 500 to 1,000 individuals, and the monitored population has declined from 127 individuals in 1993, to 47 individuals in 2014 (Service 2016, Appendix B). Therefore, this population is considered to have low resiliency. The Maderas del Carmen population in Mexico may have held the estimated MVP as recently as 2003, but the current population status is unknown, and thus the population is considered to have limited resilience (Service 2016). With only two known populations, both with limited resiliency, the species has extremely low redundancy and representation. However, if there are additional extant populations in Mexico, we would expect the redundancy and representation of the species would be greater. Based on the best available information, therefore, the species’ overall risk of extinction is such that we find it meets the definition of an endangered species. Therefore, on the

basis of the best available scientific and commercial information, we propose listing the Guadalupe fescue as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for Guadalupe fescue because of the immediacy of threats facing the species with only two known populations, one of which is declining in abundance.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. We have determined that Guadalupe fescue is endangered throughout all of its range, so an evaluation of any "significant" portion of the range is unnecessary. See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, as well as conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries, and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for

the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. Should the Guadalupe fescue be listed as an endangered or a threatened species in a final rule, the completed recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and

outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions could be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of Guadalupe fescue. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although Guadalupe fescue is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to

jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph are limited to the land management activities by the National Park Service within Big Bend National Park.

With respect to endangered plants, prohibitions outlined at 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to

increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices conducted on privately owned lands, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(2) Recreation and management at National Parks that is conducted in accordance with existing National Park Service regulations and policies; and

(3) Normal residential landscape activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized damage or collection of Guadalupe fescue from lands under Federal jurisdiction;

(2) Destruction or degradation of the species' habitat on lands under Federal jurisdiction, including the intentional introduction of nonnative organisms that compete with, consume, or harm Guadalupe fescue;

(3) Livestock grazing on lands under Federal jurisdiction; and

(4) Pesticide applications on lands under Federal jurisdiction in violation of label restrictions.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered

or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

2. Amend § 17.12(h) by adding an entry for “*Festuca ligulata*” to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* * * * *				
<i>Festuca ligulata</i>	Guadalupe fescue	Wherever found	E	[Federal Register citation of the final rule]
* * * * *				

Dated: August 18, 2016

Stephen Guertin

Acting Director, U.S. Fish and Wildlife Service.

Billing Code 4333–15

[FR Doc. 2016-21588 Filed: 9/8/2016 8:45 am; Publication Date: 9/9/2016]